

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

Seva Ram Vs. State of Rajasthan
(D.B.CRIMINAL JAIL APPEAL NO.669/2003)

D.B. Criminal Jail Appeal against the
judgment dt.6.5.2003 passed by the
Additional Sessions Judge Deedwana in
Sessions Case No.(26/02) 14/02.

Date of Judgment: July 20, 2006

P R E S E N T

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE R.P.VYAS

Mr.Vinit Jain, Amicus Curiae

Mr.O.P.Rathi, Public Prosecutor

Reportable

BY THE COURT: (PER HON'BLE MR.MATHUR J.)

1. It is the case of strange infatuation, wherein the appellant alleged to have killed his wife and daughter aged 8-9 years on a trifle issue not with the victims but his own brothers. Quickly after the incident appellant made confession of the commission of the crime before

P.W.1 Majid Khan and later on P.W.11 Dalu Ram. The appellant was arrested on the same day. His clothes stained with human blood which he was wearing at the time of arrest were seized. He made a disclosure statement consequent to which weapon of offence namely Axe and knife were recovered. On being chargesheeted he faced trial for offence under Section 302 I.P.C. The court of Additional Sessions Judge, Deedwana held him guilty of offence under Section 302 I.P.C. and sentenced to imprisonment for life by the impugned judgment dated 6.5.2003. He has also been convicted for offence under Section 201 I.P.C. and sentenced to 2 years rigorous imprisonment. Admittedly, there is no direct evidence of eye-witnesses. The case of the prosecution is primarily based on extra judicial confession of the appellant coupled with discovery of the fact leading to the recovery of weapon of offence namely Kulhari and Knife. The another incriminating circumstance is of the presence of human blood on the clothes of the appellant. Prosecution has also relied upon the existence of motive which infuriated the appellant to commit the crime. With the assistance of the learned Amicus Curiae we have perused the critically scrutinized

the entire evidence on record.

2. The conspectus of the case is that P.W.12 Mohan Ram the brother of the deceased submitted a written report at Police Station Molasar stating inter alia that on 13.2.2002 he was being informed by P.W.10 Surjana Ram and Parsa Ram that his sister Mst.Phepha and niece Miss Santosh were killed by the appellant by putting them to fire. On entering in the house he found that the dead bodies of his sister and the niece were lying in badly burnt condition. There was smoke in the house. The clothes of appellant Seva Ram were drenched with blood. On this information police registered a case for offence under Section 302 & 201 I.P.C. and proceeded with investigation. The police sent both the dead bodies for postmortem. The postmortem was conducted by a Medical Board consisting of three doctors. P.W.6 Dr.Murad Khan has proved the postmortem report of Mst.Phepha Ex.P19 and of Miss Santosh Ex.P20. It is stated by P.W.6 Dr.Murad Khan that the Medical Board noticed the following injuries on the dead body of Mst.Phepha:-

(1) Skull, face, neck and left shoulder – skin and most of the soft bone burnt sparing only a small area of occipital region, which just of

long hair spared burning. Right temporal and maxillary burnt where exposing burnt intra cranial structures.

(2) Ramanaut of burnt left lower limb – skin and soft tissues almost completely burnt exposing whole burnt bones of foot, leg and distal part of femur – 3 Kadas (female ornament) present on lower leg.

(3) Rama neut of burnt part of upper end of right tibia bone.

He stated that in the opinion of the medical board the cause of death of Mst.Phepha could not ascertained because most of the vital structure viz skin, whole of the trunk and, abdomen were absent from the body and out of remaining parts almost all soft tissues were also burnt and coagulated. The nature of burn whether ante mortem or post mortem could not be ascertained because of the reasons described above.

It is further stated by P.W.6 Dr.Murad Khan that the Medical Board noticed the following injuries on the dead body of Miss Santosh:-

(1) Skull, face and neck – skin and soft tissues were burnt coagulated and blackened sparing a part of scalp and hair on occipital area.

(2) Wound on face at left intra orbital and maxillary area of size 5 cm x 3 cm x fractured maxillary bone. Margin & base of

wound was also burnt.

(3) Neck – skin and soft tissues were burnt and coagulated.

(4) Chest – Walls burnt exposing under lying partially burnt ribs, left side was more burnt whole left lung was also absent. Heart and right lung burnt and coagulated.

(5) Left upper limb with shoulder absent. Right upper limb with shoulder-soft tissue were burnt exposing burnt whole bone.

(6) Both lower limbs absent sparing both upper 1/3rd of femur wrapped with burnt soft tissue.

He stated that in the opinion of the medical board the cause of death of Miss Santosh could not be ascertained because most of the vital structures were burnt and coagulated. The nature of burn whether ante mortem or post mortem could not be ascertained because most of the skin and soft tissues were burnt and absent.

3. It is contended by Mr.Vinit Jain learned Amicus Curiae that extra judicial confession allegedly made by the appellant is not creditworthy. It is also submitted that appellant has been falsely implicated. On the other hand the learned Public Prosecutor has supported the judgment of the trial court.

4. It is settled position of law that extra judicial confession, if true and voluntary, it can be relied by the court to convict the accused for the commission of the crime alleged. The Apex Court in *Guru Singh vs. State of Rajasthan* reported in AIR 2001 SC page 330 after considering the number of cases held that the extra judicial confession which is not obtained by coercion, free from favour or falsehood and is plenary in character and voluntary in nature can be made the basis for conviction even without corroboration.

5. In the instant case extra judicial confession made by the appellant has been sought to be proved by the testimony of P.W.1 Majid Khan and P.W.11 Dalu Ram. P.W.1 is the neighbor of the appellant. He deposed that on 12.2.2002 at about 11 - 11.30 he heard the appellant Seva Ram abusing his brothers. Thereafter he heard the cries of his wife. He did not give any attention to the said fact as there was nothing unusual as per the temperament of the appellant. He also stated that the appellant was not doing any job and he used to mostly take up quarrel. In the morning he found that there was a big crowd in front of the house of the

appellant. The smoke was coming out his house. He along with P.W.11 Dalu Ram Sarpanch and some other people entered in the house. They found that the bodies of Phepha and Santosh were burnt. They brought out Seva Ram out of the house. His hand and legs were drenched with blood. There was also blood on his clothes. There was blood in the drainage as well which was blocked by putting sand. He inquired from appellant Seva Ram as to what he has done. He disclosed that he was tired with the conduct of his brothers and therefore he cut his wife and daughter by Kulhari and knife and thereafter put the dead bodies to fire. He also stated that Seva Ram also used to separately live from his brothers. He also used to cultivate land separately. There is a lengthy cross examination but nothing substantial has been brought in the cross examination to discredit the testimony of this witness.

6. P.W.11 Dalu Ram is the Sarpanch of Village Dhankoli. He stated that in the morning at about 6.30 one Heera Ram informed him that the appellant Seva Ram has killed his wife Phepha Devi and Santosh by putting them to fire. He reached to the house of the appellant. Number of other villagers had also assembled

there. The smoke was coming out of the house of Seva Ram. He went inside the house. There was blood on the clothes of the appellant. He along with others brought out Seva Ram from the house. There were blood spots on the clothes of the appellant. He inquired from him as to how the incident had taken place on which Seva Ram disclosed that he had killed his wife Phepha Devi and daughter Santosh cutting them by axe and knife and thereafter put the dead bodies to fire. He also stated that he had done so in order to implicate his brothers. Nothing substantial has been brought in the cross examination to discredit the testimony of this witness.

7. P.W.12 Mohan Ram is the brother of deceased Phepha Devi. He stated that his sister Phepha Devi was married with appellant Seva Ram. The deceased Santosh was the daughter of the appellant aged 8-9 years. According to him the appellant was a person of suspicious nature. He used to beat his sister. On receiving the information from Paras Ram and Surjana Ram he rushed to the spot. When he reached there he found Seva Ram sitting wearing a Loongi and Baniyan. There were blood spots on the clothes. The dead bodies of Phepha Devi and Santosh were burning. He also

found blood on the floor of the room. The blood was blocked in a drainage by putting sand. On inquiry he disclosed that he had cut Phepha and Santosh by Kulhari and knife and then the dead bodies were put to fire. He also stated that he wanted to settle score with his brothers. It was further stated that when he visited his house about 4-5 days back he expressed displeasure with his brothers. Nothing substantial has been brought in the cross examination to discredit the testimony of this witness.

8. P.W.14 Pitha Ram is the another brother of deceased Mst.Phepha. He deposed that about 6-7 months back his sister along with the appellant Seva Ram visited his house. Some time he used to beat his sister. He also stated that he was a person of suspicious nature and short tempered. He also stated that his brother Mohan Ram returned from the village Dhankoli and informed him that Phepha Devi and Santosh have been killed by the appellant. P.W.14 Narayani Devi is the mother of deceased Phepha Devi. She deposed that appellant was a person of suspicious nature. Whenever her daughter Phepha Devi used to visit the house he did not allow to talk with them

separately. When they visited last they were planning to sell the field. Hearing about the incident she had sent her son Mohan Ram to the house of the appellant. On return he reported that Phepa and Santosh were killed by the appellant.

9. P.W.16 Ladu Khan stated that in the morning of 13.2.2002 he came to know that a fire had taken place at the house of Seva Ram and he has killed his wife and daughter. He also came to know that Seva Ram confessed that he had killed his wife and daughter. He gave an information of the incident to the Police Station, Molasar. P.W.17 Parsa Ram stated that his vehicle was requisitioned by Heera Ram. He was asked to bring the parents of deceased Phepha. Accordingly he went and informed Mohan Ram. On return he found that Seva Ram was sitting outside the house. There was blood on his body and clothes. P.W.3 Deva Ram, P.W.5 Heera Ram, P.W.7 Smt. Chuki Devi, P.W.8 Bhanwar Lal, P.W.9 Shiv Kumar, P.W.10 Surjana Ram and P.W.18 Jora Ram have not supported the prosecution case and as such they were declared hostile. It can be noticed that the first witness of extra judicial confession namely P.W.1 Majid Khan is the neighbor and the

second witness P.W.11 Dalu Ram is the Sarpanch. Thus in normal circumstances the appellant could have reposed confidence in them. The confession has been made instantaneously just immediately after the appellant was brought out of the house and is not alleged to have been procured without any undue influence, coercion or pressure. There is nothing to show that they had promised to favour the appellant in case he made the truthful statement regarding the appellant. There is no reason to discredit the statements of both the witnesses. The statements of both the witnesses find corroboration from the other witnesses referred to above. Thus, the trial court has rightly relied upon the evidence of extra judicial confession.

10. P.W.24 Khalil Ahmed is the Investigating Officer. He stated that the appellant was arrested on the same day vide Ex.P12. He had seized his clothes vide Ex.P13. The clothes were stained with blood. The clothes were packed and sealed on the spot. The packet was deposited with P.W.23 Ravta Ram, Incharge Malkhana. There is link evidence of P.W.20 Hanuman Ram and P.W.22 Rameshwar. As per the FSL report Ex.P54 the

Loongi and Baniyan were found stained with blood of human origin. No explanation has been given by the appellant as the presence of the human blood on his clothes. It is further stated by P.W.24 Khalil Ahmed that in pursuance of the information given by the appellant vide Ex.P52 blood stained Kulhari and Knife were recovered vide Ex.P14. As per the FSL report Ex.P54 both the weapons have been found to be stained with blood of human origin.

11. Thus, on careful consideration of the entire evidence, we are of the view that the appellant made confessional statement before P.W.1 Majid Khan and P.W.11 Dalu Ram. He made voluntary disclosure statement leading to the recovery of the blood stained Kulhari and Chhuri. There is another incriminating circumstance which is conclusive nature that human blood has been found on his Baniyan and Loongi for which he has not been able to give any explanation. All these circumstances are sufficient to connect the appellant with the commission of crime for which he was rightly held guilty and convicted and sentenced by the trial court which deserves to be confirmed.

12. Consequently there is no merit in the appeal. The appeal stands dismissed. The appellant is in Jail. He will serve out the remaining part of the sentence.

(R.P. VYAS), J.

(N.N.MATHUR), J.

BKS/-